

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DENNIS GOLDSBERRY,

Plaintiff,

vs.

IOWA, CHICAGO & EASTERN RAILROAD CORPORATION, DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, SOO LINE RAILROAD COMPANY, SOO LINE RAILROAD COMPANY d/b/a CANADIAN PACIFIC RAILWAY, CANADIAN PACIFIC RAILWAY and I & M RAIL LINK, LLC,

No.

TRIAL BY JURY DEMANDED

Defendants.

COMPLAINT AT LAW

NOW COMES the Plaintiff, DENNIS GOLDSBERRY, by and through his attorneys, CRAIG W. CHURCH and HOEY & FARINA, for his Complaint against the Defendants, IOWA, CHICAGO & EASTERN RAILROAD CORPORATION, DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, SOO LINE RAILROAD COMPANY, SOO LINE RAILROAD COMPANY d/b/a CANADIAN PACIFIC RAILWAY, CANADIAN PACIFIC RAILWAY, and I & M RAIL LINK LLC, states:

1. Jurisdiction of this Court is invoked under the provisions of Title 45 U.S.C. § 56 and Title 28 U.S.C. § 1331.
2. The Defendants, IOWA, CHICAGO & EASTERN RAILROAD CORPORATION, DAKOTA, MINNESOTA, EASTERN RAILROAD CORPORATION, SOO LINE RAILROAD COMPANY, SOO LINE RAILROAD COMPANY d/b/a CANADIAN PACIFIC RAILWAY and CANADIAN PACIFIC RAILWAY, are corporations engaged in operating a railroad as

common carriers engaged in interstate commerce between the various states of the United States, and are subject to service of process and to the jurisdiction of this Court.

3. At the time of the injury alleged herein, Plaintiff was employed by Defendants as a conductor and switch foreman, and his duties as such were in furtherance of interstate commerce for the Defendants.

4. At said time, both Plaintiff and Defendants were subject to the Act of Congress known as the Federal Employer's Liability Act, 45 U.S.C. §§ 1-32.

5. At all pertinent times, Defendants operated a railroad system as common carriers of freight in and through the various states.

6. Defendants, owned, and through its agents and employees, managed, maintained and used, as part of its railroad system, certain railroad yards in East Moline, Illinois and Davenport, Iowa known as the East Moline Yard, Nahant and West Davenport Yards.

7. Since 1995, the Plaintiff, Dennis Goldsberry, was employed by the Defendants, as a conductor and switch foreman at its East Moline, West Davenport and Nahant Yards, and worked local switching jobs throughout Rock Island County, Illinois and Scott County, Iowa.

8. That since 1995, the Plaintiff, Dennis Goldsberry, was required by the Defendants, in the normal course of his duties to perform conductor and switch foreman activities at Defendants' East Moline, West Davenport and Nahant Yards, and throughout Rock Island County, Illinois and Scott County, Iowa.

9. It was the continuing duty of Defendants, as employers, at that time and place, to use ordinary care in furnishing Plaintiff with a reasonably safe place to work.

10. In the course of his duties as a conductor and switch foreman at the aforesaid locations, Plaintiff was repeatedly and continuously exposed to excessive and harmful diesel exhaust emitted by Defendants' locomotive engines.

11. As a result of Dennis Goldsberry's long term, heavy exposure to workplace locomotive engine diesel exhaust, he developed pneumonia and lung complications, resulting in decreased lung capacity, which permanently disabled him from his railroad employment.

12. Defendants knew, or in the exercise of reasonable care, should have known that they were unnecessarily exposing its employees, including Plaintiff, Dennis Goldsberry, to an unreasonable and foreseeable risk of illness and injury and, in fact such negligence did cause, in whole or in part, Plaintiff's physical condition and resulting disability.

13. In violation of their duty, Defendants were guilty of one or more of the following acts or omissions, in violation of the Federal Employer's Liability Act:

- (a). Negligently failed to warn Dennis Goldsberry of the dangers of exposures to dangerous diesel exhaust;
- (b). Negligently failed to provide him with safe or adequate equipment to protect him against exposure to dangerous diesel exhaust;
- (c). Negligently utilized old and poorly maintained locomotive engines that emitted excessive and harmful diesel exhaust;
- (d). Negligently failed to provide him with proper breathing protection, such as masks, respirators and ventilation;
- (e). Negligently failed to design and adopt job and workplace controls and procedures to limit exposure to excessive and dangerous diesel exhaust;
- (f). Negligently failed to properly monitor and test its workplace;
- (g). Negligently and carelessly exposed Plaintiff to excessive and dangerous diesel exhaust;

(h). Negligently and carelessly exposed Plaintiff to fumes from locomotives.

14. Defendants' failure to provide Plaintiff with a safe place to work, by one or more of the foregoing negligent acts or omissions caused, in whole or in part, the Plaintiff to develop severe and disabling lung complications that substantially restricted his breathing and activities.

15. As a consequence, Plaintiff incurred injuries which have caused and will continue to cause him great pain suffering, inconvenience, anguish, and disability. As a further result, Plaintiff has been and, in the future, will be kept from attending to his ordinary affairs and duties, and has lost and will lose great gains which he otherwise would have made and acquired. As a further result, Plaintiff has incurred medical, hospital, and related expenses and is reasonably certain to incur further medical, hospital, and related expenses in the future.

16. Plaintiff requests trial by jury.

WHEREFORE, Plaintiff, DENNIS GOLDSBERRY demands judgment in his favor and against Defendants, IOWA, CHICAGO & EASTERN RAILROAD CORPORATION, DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, SOO LINE RAILROAD COMPANY, SOO LINE RAILROAD COMPANY d/b/a CANADIAN PACIFIC RAILWAY, CANADIAN PACIFIC RAILWAY and I & M RAIL LINK LLC, and each of them, in excess of the jurisdictional minimum.

DENNIS GOLDSBERRY

By: /s Craig W. Church

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